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COLORADO CASUALTY INSURANCE COMPANY

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 DAVID CRANMER,

11 Plaintiff,

12 vs.

13 COLORADO CASUALTY INSURANCE
14 COMPANY and DOES I – V and ROE
15 CORPORATIONS I – V, inclusive,

16 Defendants.

17 CASE NO.: 2:14-cv-00645-MMD-VCF

18 **COLORADO CASUALTY INSURANCE
COMPANY'S CONFIDENTIALITY
AND PROTECTIVE ORDER**

19 Pursuant to stipulation of the parties, and for good cause appearing:

20 IT IS HEREBY ORDERED to preserve and maintain the confidentiality of certain
21 confidential, commercially sensitive and proprietary documents to be produced by Colorado
22 Casualty Insurance Company (“CCIC”) in this action, it is ordered that:

23 1. Documents to be produced by CCIC in this litigation which contain confidential
24 information shall hereafter be referred to as “Protected Documents.” Any document or any
25 information designated as “Subject to Protective Order,” or other similar language in accordance
with the provisions of this Order, shall only be used, shown or disclosed as provided in this
Order.

26 2. As used in this Order, the term “documents” means all written material, videotapes
27 and all other tangible items, produced in whatever format (e.g., hard copy, electronic, digital,

1 etc.) and on whatever media (e.g., hard copy, videotape, computer diskette, CD-ROM, DVD, hard
 2 drive or otherwise).

3 3. The burden of proving that a Protected Document contains trade secret or other
 4 confidential information is on the party producing the document. Prior to designating any
 5 material as "Protected," the producing party must make a bona fide determination that the
 6 material is, in fact, a trade secret, confidential information or other commercially sensitive
 7 information, the dissemination of which would damage the party's competitive position. If a
 8 party disagrees with the "Protected" designation of any document, the party will so notify the
 9 producing party in writing. If the parties are unable to agree, within 30 days of receiving such
 10 notice, the producing party will then apply to this Court to set a hearing for the purpose of
 11 establishing that said document is protected. Any document so marked as "Protected" will
 12 continue to be treated as such pending determination by the Court as to its confidential status.

13 4. The designation of Protected Documents shall be made by marking or placing the
 14 notice "Confidential: Subject to Protective Order", on the document, or, where a copy of the
 15 original document is to be produced, on that copy in a location that does not cover or mark over
 16 any textual material if possible.

17 5. Protected Documents and any copies thereof received pursuant to paragraph 6
 18 below shall be maintained confidential by the receiving party, his/her attorney, other
 19 representatives, and expert witnesses, and shall be used only for preparation for the trial of this
 20 matter, subject to the qualifications set forth herein.

21 6. Protected Documents shall be disclosed only to "Qualified Persons." Qualified
 22 Persons are limited to:

- 23 a. Counsel of Record in this action for the parties, and the parties;
- 24 b. Employees of Counsel of Record involved in the preparation and trial of
 this action;
- 25 c. Experts and non-attorney consultants retained by the parties for the
 preparation or trial of this case, provided that no disclosure shall be made
 to any expert or consultant who is employed by a competitor of CCIC; and

- d. The Court, the Court's staff, witnesses, and the jury in this case.
- e. The term "competitor" as used in subsection (c) shall be defined as anyone currently employed by an insurer or business engaged in the practice of handling insurance claims.

7. Plaintiffs' Counsel must make reasonable efforts to ensure the individuals described in paragraphs 6(b) and 6(c) above are "Qualified Persons."

8. Before receiving access to any Protected Document or the information contained therein, each person described in paragraph 6(c) above shall execute a "Written Assurance" in the form contained in Exhibit A, attached hereto. Counsel for the Parties shall retain each such executed "Written Assurance" and shall keep a list identifying all persons described in paragraphs 6(c) above to whom Protected Documents have been disclosed, and (b) all Protected Documents disclosed to such persons. Upon any party's request and a good faith basis, such as a reasonable belief that the terms and provisions of this Order have been or are in jeopardy of being violated, Counsel of Record shall provide within seven (7) business days, a copy of such lists, excluding documents disclosed to non-testifying consulting experts, together with copies of the written agreements executed by persons described in subparagraph 6(c) above. A party must move the Court for disclosure of the Protected Documents disclosed to non-testifying consulting experts.

9. As the Protected Documents may only be distributed to "Qualified Persons," Counsel of Record, and all persons described in paragraph 6 above may not post Protected Documents on any website or internet accessible document repository.

10. To the extent that Protected Documents or information obtained therefrom are used in the taking of depositions and/or used as exhibits at trial, or to the extent that deposition testimony is otherwise marked "Confidential," such documents, information and/or testimony shall remain subject to the provisions of this Order, along with the transcript pages of the deposition testimony and/or trial testimony dealing with the Protected Documents, information and/or testimony.

11. Prior to filing any documents with the Court that contain any portion of any Protected Document or information taken from any Protected Document, that party must file a

1 motion for an order sealing the documents consistent with the Ninth Circuit opinions of
 2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) and *Pintos v.*
 3 *Pacific Creditors Association*, 605 F.3d 665, 678 (9th Cir. 2010) and consistent with Local
 4 Rule 10-5(b). A copy of the motion to seal must be served on all parties that have appeared in the
 5 case.

6 12. Any court reporter or transcriber who reports or transcribes testimony in this
 7 action shall agree that all “Confidential” information designated as such under this Order shall
 8 remain confidential and shall not be disclosed by them, except pursuant to the terms of this Order,
 9 and that any notes or transcriptions of such testimony (and any accompanying exhibits) will be
 10 retained by the reporter or delivered to counsel of record.

11 13. Inadvertent or unintentional production of documents or information containing
 12 information which should have been designated as “Confidential” shall not be deemed a waiver in
 13 whole or in part of the party’s claims of confidentiality. If a party fails to designate a document
 14 as confidential within 30 days of receipt of the document, and at some point thereafter wishes to
 15 re-designate the document as confidential, the party may do so either by obtaining agreement
 16 from the opposing party, or by obtaining leave from the Court to allow the document to be re-
 17 designated as confidential. Once a party contacts the opposing party about a document that it
 18 wishes to re-designate as confidential, the opposing party is prohibited from further disseminating
 19 the subject document, and must take all reasonable steps to ensure that it is not further
 20 disseminated by any party who may have a copy of the subject document, until there is a
 21 determination regarding whether the document will be allowed to be re-designated as
 22 confidential. If a party so requests, the opposing party shall respond in writing describing what
 23 actions were taken as reasonable efforts.

24 A party shall be obligated to challenge the propriety of a designation of confidential
 25 information at the time made, and failure to do so shall preclude a subsequent challenge to such
 26 designation. In the event any party to this litigation disagrees with the designation by a party of
 27 any information as confidential, the parties shall try first to resolve such dispute in good faith on
 28 an informal basis in accordance with the applicable Federal Rules of Civil Procedure. This shall

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1 be accomplished within 30 days of the designation of the document as confidential. If the dispute
2 cannot be resolved by the parties after undertaking reasonable good faith efforts, the parties
3 seeking to remove the confidential designation of the information may apply for appropriate relief
4 from the Court, which shall be permitted to conduct an in-camera inspection of the confidential
5 materials. The party seeking to remove the confidential designation of the information shall
6 apply for relief from the Court no later than 14 days after concluding the informal dispute
7 resolution with the party that designated the information as confidential. Such designation shall
8 be construed under the Federal Rules of Civil Procedure governing protective orders, and the
9 appropriate case law construing those provisions.

10 14. This Protective Order may not be waived, modified, abandoned or terminated, in
11 whole or part, except by an instrument in writing signed by the parties. If any provision of this
12 Protective Order shall be held invalid for any reason whatsoever, the remaining provisions shall
13 not be affected thereby.

14 15. After termination of this litigation, the provisions of this Order shall continue to be
15 binding. This Court retains and shall have jurisdiction over the parties and recipients of the
16 Protected Documents for enforcement of the provisions of this Order following termination of
17 this litigation.

18 16. This Protective Order shall be binding upon the parties hereto, upon their
19 attorneys, and upon the parties' and their attorneys' successors, executors, personal
20 representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions,
21 employees, agents, independent contractors, or other persons or organizations over which they
22 have control.

23 17. All persons described in paragraph 6 above shall not under any circumstance sell,
24 offer for sale, advertise, or publicize either the Protected Documents and the Confidential
25 information contained therein or the fact that such persons have obtained any party's Protected
26 Documents and Confidential information.

27 18. At the conclusion of this suit, and at the request of the producing party, all original
28 Protected Documents shall be returned to the party from which they came; all copies shall be

1 securely destroyed. Counsel shall return all confidential material to counsel for the producing
2 party, along with a signed certification from the attorney for the returning party that all copies of
3 the confidential materials have been returned to the producing party. Counsel for the producing
4 party only, shall be entitled to retain copies of materials designated confidential, for purposes of
5 record keeping relative to the client's file and for purposes of record keeping for the returning
6 party, if that party would ever be able to establish a need to access the confidential materials at
7 some point in the future. Such retained copy shall be appropriately maintained confidential, and
8 shall not subject to disclosure to any other persons absent further order of the Court.

9
10 **ORDER**
11

12 IT IS SO ORDERED.
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14 DATED this 20th day of November, 2014.
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1 **EXHIBIT A**

2 **UNITED STATES DISTRICT COURT**
3 **DISTRICT OF NEVADA**

4 DAVID CRANMER,

5 Plaintiff,

6 vs.

7 COLORADO CASUALTY INSURANCE
8 COMPANY and DOES I – V and ROE
9 CORPORATIONS I – V, inclusive,

10 Defendants.

11 CASE NO.: 2:14-cv-00645-MMD-VCF

12 **WRITTEN ASSURANCE REGARDING
13 CONFIDENTIALITY AND
14 PROTECTIVE ORDER**

15 STATE OF _____)
16 COUNTY OF _____) ss:

17 **AFFIDAVIT OF** _____

18 being duly
19 sworn and personally appearing before the undersigned attesting officer, duly authorized by law
20 to administer oaths, deposes and says that the within statements are true and correct:

21 1. I have read the Protective Order attached hereto and I understand its terms and
22 meanings.

23 2. I agree that my signature below submits me to the jurisdiction of the United States
24 District Court, District of Nevada, in which the action of *Cranmer v. Colorado Casualty*
25 *Insurance Company*, 2:14-cv-00645-MMD-VCF, is pending, and binds me to the provisions of
26 the Protective Order, including to all promises undertaken in the Order, as if originally agreed by
me.

27 **FURTHER AFFIANT SAYETH NOT.**

28 This _____ day of _____, 201____.

29 Signature

30 SUBSCRIBED AND SWORN to before me
31 this _____ day of _____, 2014.

32 NOTARY PUBLIC